

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT  
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE  
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.**

FILED BY CLERK

MAY 29 2009

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

BLANCA M.,

Appellant,

v.

ARIZONA DEPARTMENT OF  
ECONOMIC SECURITY and  
ESMERALDA M.,

Appellees.

2 CA-JV 2009-0004

DEPARTMENT A

MEMORANDUM DECISION

Not for Publication

Rule 28, Rules of Civil

Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 16730500

Honorable Peter W. Hochuli, Judge Pro Tempore

AFFIRMED

Nuccio & Shirley, P.C.

By Salvatore Nuccio

Tucson  
Attorneys for Appellant

Terry Goddard, Arizona Attorney General

By Claudia Acosta Collings

Tucson  
Attorneys for Appellee Arizona  
Department of Economic Security

P E L A N D E R, Chief Judge.



¶1 Blanca M., mother of Esmeralda M., born in January 2006, appeals from the juvenile court’s order terminating her parental rights to Esmeralda based on neglect, mental illness or chronic substance abuse, and the length of time Esmeralda had spent in a court-ordered, out-of-home placement.<sup>1</sup> *See* A.R.S. § 8-533(B)(2), (3), (8)(b).<sup>2</sup> For the reasons set forth below, we affirm.

¶2 A juvenile court may terminate a parent’s rights only if it finds by clear and convincing evidence that a statutory ground for severance exists and finds by a preponderance of the evidence that severance is in the child’s best interests. A.R.S. §§ 8-533(B), 8-537(B); *see also Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). On review, we “accept the juvenile court’s findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). If an appellate court finds severance justified on one statutory ground, it need not consider the sufficiency of the evidence on other grounds. *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 27, 995 P.2d 682, 687 (2000).

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<sup>1</sup>The parental rights of Esmeralda’s father, whose identity is unknown, were also terminated.

<sup>2</sup>Section 8-533(B)(8)(b) has been renumbered as § 8-533(B)(8)(c). 2008 Ariz. Sess. Laws, ch. 198, § 2. In this decision, we refer to the statute as numbered when the motion for termination was filed in August 2008.



¶3 We view the evidence in the light most favorable to upholding the juvenile court’s ruling. *Id.* ¶ 20. Esmeralda is the youngest of Blanca’s five children, none of whom remains in her care. Three of the children reside with their maternal grandmother in Mexico, while Blanca’s rights to the fourth child were terminated in 2004. Blanca reported to Child Protective Services (CPS) that she gave birth to Esmeralda in Mexico “because she was afraid CPS would take her child away.” Blanca then left Esmeralda with the child’s maternal grandmother while Blanca served a 1.5-year prison term for transporting an undocumented child from Mexico into the United States. Although Blanca described her mother as having been “very physically and emotionally abusive,” according to psychologist Carlos Vega, she reportedly “had no compunction about leaving her children with her mother, only to mention in passing that she did not believe she was [as] abusive as she used to be.”

¶4 Blanca’s sister, Antonia, brought Esmeralda to the United States while Blanca was incarcerated. Antonia then left Esmeralda with Idalia Montano, a woman she had met while searching for an apartment. Antonia told Idalia “to either keep Esmeralda or [Antonia] would have to take her to a shelter in Mexico because she was not able to care for her.” While Blanca was incarcerated, she refused Idalia’s request to provide a power of attorney so Idalia could obtain medical services for Esmeralda. Upon Blanca’s release from prison in March 2007, she saw Esmeralda “a few times . . . [for] 5-10 minutes.”

¶5 In May 2007, upon learning that Esmeralda had been living with Idalia, against whom a prior substantiated CPS report had been filed, CPS removed Esmeralda from Idalia’s



custody. In June 2007, the Arizona Department of Economic Security (ADES) filed a dependency petition alleging the following: Blanca had left Esmeralda with her maternal grandmother in Mexico; for more than one year, Esmeralda had been cared for in Tucson by a nonrelative against whom a substantiated report of child abuse had been filed; Blanca had refused to provide that person with a power of attorney to obtain medical services for Esmeralda; Blanca's parental rights to another child, who was born substance-exposed, were terminated in 2004; and Blanca had a criminal history and a history of substance abuse. In July 2007, Blanca admitted the allegations in an amended dependency petition, and the juvenile court adjudicated Esmeralda dependent as to her.

¶6 In furtherance of the initial case plan goal of reunification, ADES provided various services to Blanca, the sufficiency of which she does not challenge on appeal. Although Blanca substantially complied with some of her case plan tasks, as late as July 2008, she still had not stabilized her housing and employment, participated in psychiatric treatment to address her depression, continued with individual therapy, or complied with the rules established for unsupervised visits with Esmeralda. At the permanency hearing in August 2008, after finding that Blanca was not in compliance with the case plan despite ADES's reasonable efforts to help her, the juvenile court changed the case plan goal from reunification to severance and adoption. A few days later, ADES filed a motion to terminate Blanca's parental rights, alleging abuse or neglect, mental illness or chronic substance abuse, and length of time in care, pursuant to A.R.S. § 8-533(B)(2), (3), and (8)(b). Following a



one-day contested severance hearing, the court terminated Blanca's parental rights, finding severance warranted on each of the grounds alleged.

¶7 To terminate Blanca's parental rights pursuant to § 8-533(B)(8)(b), the juvenile court was required to find that Blanca had been unable to remedy the circumstances that had caused Esmeralda to remain in an out-of-home placement for a cumulative period of fifteen months or longer and that there is a substantial likelihood Blanca would not be able to parent Esmeralda adequately in the near future. Blanca claims the court's ruling on this ground was inadequate because it did not provide "a detailed explanation" why she would not be able to parent Esmeralda in the near future. She asserts:

It defies logic that one day you can trust a parent to appropriately parent their child in an unsupervised setting and then as soon as they violate one of the parameters of that unsupervised contact that you determine that the parent has no reasonable possibility of parenting in the near future.

¶8 Contrary to Blanca's claim, the juvenile court provided a detailed explanation of its findings on the out-of-home placement ground:

During the course of the case the mother has been provided with visitation, parenting classes, two psychological evaluations, substance abuse testing and treatment, two courses of therapy, and case management. Although mother participated in the first course of therapy, when it was recommended by Dr. Sanchez that she participate in additional therapy Mother failed to follow through even though she was given that opportunity. In April, 2008, Mother had been making some progress with her case plan. ADES acknowledged the progress [and] pointed out that Mother[']s life continued to be "tumultuous[.]" In an effort to bring the case to permanency ADES, despite Mother[']s failure to be in compliance with her total case plan, established



unsupervised visits with the hope that it would empower Mother to be more proactive in the other aspects of her case plan. In fact, Mother had six unsupervised visits. However, ADES started receiving reports that when the child was returned to day care that she had not been fed lunch as would have been expected. ADES performed an unannounced visit a[t] Mother's residence when she was suppose[d] to be having an unsupervised visit with the child and discovered that she instead was in the process of moving to a new residence. Rather th[a]n cancel the visit or plan the move at a time that she did not have the child[,] Mother left the child in the care of the Aunt, a person that Mother has said she had a volatile relationship with. That Mother was in the company of Esteban Montano, previous foster father [sic] to the child and involved in his own CPS case plan, who by being there was having contact with the child against ADES approval. Unsupervised visitations were stopped. Finally, Mother admitted to ADES that she continued to lead a very chaotic and unsettled lifestyle. Mother has been able to maintain her sobriety during the course of the dependency. However, Mother failed to follow through with aspects of her case plan including a psychiatric evaluation, the second course of individual therapy, stable housing, and stable employment. Although Mother verbalizes that she has learned from the services she had participated in to put her child first[,] her failure to follow through with all aspects of her case plan and all the services offered tell[s] a different story. In fact, Mother never actually came [into] full compliance with her case plan.

¶9 As the juvenile court noted, in an effort to empower Blanca and give her additional time to stabilize her employment and her housing, CPS had permitted her to have unsupervised visits with Esmeralda, an effort that proved unsuccessful and ultimately led CPS case manager Ruby Shelby to opine that Blanca was “unwilling to engage in further accomm[o]dated services.” Shelby testified that Blanca was not attending therapy, that she had not obtained stable employment or housing, and that ADES had received reports



regarding “the lack of food, no electricity [and] the constant assembly of adults found in [Blanca’s] home.” Shelby also expressed her opinion that Blanca would not be able to parent Esmeralda any time in the foreseeable future and that Esmeralda deserved a “stable, healthy, consistent home” that would permit her to “flourish to be a happy and healthy adult.” Shelby explained that Esmeralda had been in the same foster home throughout the dependency and that her foster family, with whom she had “visibly bonded,” wanted to adopt her. Shelby opined that permitting Esmeralda to remain with her current family would be in her best interests. *See Audra T. v. Ariz. Dep’t of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998) (juvenile court could consider whether current adoptive plan existed and whether existing placement is meeting his needs).

¶10 In addition, Dr. Vega, who evaluated Blanca in July 2007, found that she “has not been and is not in a position to independently care for any child . . . [and that her depression, anxiety, and confusion] . . . will substantially limit her for a prolonged period of time.” Vega opined that Blanca’s prognosis did “not appear favorable even with the services recommended” and that it was “unlikely” she would be able to parent in the foreseeable future even if she began therapy immediately. Psychologist Francisco Sanchez, who evaluated Blanca in February 2008, concluded in his written report that she “is highly susceptible to relapse and highly susceptible to making errors in judgment, especially because she is feeling mentally confused and is clinically depressed.” He testified that, looking at all of the factors, including Blanca’s unstable employment and failure to address either her



depression or substance abuse issues, “it begins to predict ineffectiveness and inadequacies and it gives no basis to . . . demonstrate the capacity to parent a child.”

¶11 Because the juvenile court adequately summarized the relevant evidence supporting its finding that Blanca would not be able to parent Esmeralda in the near future, we find no merit in the sole issue Blanca has raised regarding this ground for termination. Moreover, the record also contains abundant evidence that Blanca had been unable to remedy the circumstances that had caused Esmeralda to be in an out-of-home placement for fifteen months or longer and that termination was in Esmeralda’s best interests. Having found that severance was justified on one statutory ground, we need not consider Blanca’s claims pertaining to the other grounds. *See Michael J.*, 196 Ariz. 246, ¶ 27, 995 P.2d at 687. Therefore, we affirm the juvenile court’s order terminating Blanca’s rights to Esmeralda.

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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PHILIP G. ESPINOSA, Judge